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September 26, 2011

**VIA OVERNIGHT MAIL**

FOIA Appeals

U.S. Customs and Border Protection  
799 Ninth Street, NW, Mint Annex  
Washington, DC 20229-1179

**Re: Freedom of Information Act Request Reference Number  
2011F13090, Freedom of Information Act Appeal**

Dear Sir or Madam:

We represent the American Immigration Council (AIC) with regard to the above-referenced matter. On June 15, 2011, AIC submitted a FOIA request to U.S. Customs and Border Patrol (CBP), requesting records that describe, refer or relate to CBP's enforcement operations and activities within 100 miles of the U.S.-Mexico border aimed at and/or resulting in voluntary returns of individuals to their countries of origin from January 2009 to the present (the "AIC Request," attached as Exhibit A). On August 3, 2011, CBP responded to AIC's FOIA request in a letter signed by Dorothy Pullo, Director, FOIA Division, Office of International Trade (the "CBP Response," attached as Exhibit B). This letter is an appeal of CBP's adverse determination, pursuant to FOIA, 5 U.S.C. § 552 and 6 C.F.R. § 5.9. This appeal is filed within 60 days of CBP's August 3, 2011 letter, pursuant to 6 C.F.R. § 5.9.

AIC's Request identified fourteen, non-exhaustive categories of records that would be responsive to its request. See Exhibit A at 1-3.

Specifically, AIC indicated that responsive records would include but not be limited to, records describing, referring, or relating to:

- (1) How DHS and/or CBP agents decide to stop, arrest and/or detain individuals believed to be present in the United States in violation of the immigration laws.
- (2) Guidance, guidelines, directives, rules, policies, procedures or other documents that address questioning of individuals apprehended by DHS and/or CBP agents.

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- (3) Criteria or other standards used by DHS and/or CBP agents to determine whether individuals they have apprehended are eligible for voluntary return;
- (4) Guidance, guidelines, directives, rules, policies, procedures or other documents that address means of determining that individuals apprehended by DHS and/or CBP agents knowingly and voluntarily consent to voluntary return and knowingly and voluntarily waive their right to a hearing before an immigration judge and/or to any immigration relief for which they may be eligible.
- (5) Guidance, guidelines, directives, rules, policies, procedures, instructions, memoranda or other documents regarding an agent's use of coercive tactics, including but not limited to the actual or threatened use of violence, sexual assault, and/or retaliation against family members to persuade individuals apprehended by DHS and/or CBP to accept voluntary return.
- (6) Any other guidance, guidelines, directives, rules, policies, procedures or other documents that address processing of individuals apprehended by CBP for voluntary return in lieu of removal.
- (7) Guidance, guidelines, directives, rules, policies, procedures, or other documents that address means of ensuring that individuals who have signed Form I-826, Notice of Rights and Request for Disposition, depart from the United States.
- (8) Agreements, correspondence, or communications within and/or among CBP, DHS, any of their agents, agencies, sub-agencies, or offices, and/or U.S. Attorneys' Offices regarding the use of voluntary return in lieu of removal.
- (9) Training materials used to educate CBP agents about the use of voluntary return in lieu of removal.
- (10) From January 2009 to April 2011, the total number of voluntary returns of individuals to their countries of origin, the nationalities of individuals who agreed to voluntary return, and, if available, the number of voluntary returns per month.
- (11) Complaints, correspondence, communications, or other documents from any individual or entity regarding alleged misconduct by DHS or CBP agents within 100 miles of the U.S.-Mexico border, including but not

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limited to documents relating to the alleged mistreatment of any individual while in CBP custody.

- (12) Complaints, correspondence, communications, or other documents from any individual or entity regarding alleged use of coercive tactics by DHS or CBP agents within 100 miles of the U.S.-Mexico border, including but not limited to the actual or threatened use of violence, sexual assault, and/or retaliation against family members to persuade individuals apprehended by DHS and/or CBP to accept voluntary return.
- (13) Memoranda, reports, correspondence, communications, or other documents regarding investigations undertaken by DHS, CBP, or another government agency regarding alleged misconduct by DHS or CBP agents within 100 miles of the U.S.-Mexico border, including but not limited to documents relating to the alleged mistreatment of any individual while in CBP custody.
- (14) Memoranda, reports, correspondence, communications, or other documents regarding investigations undertaken by DHS, CBP, or another government agency regarding alleged use of coercive tactics by DHS or CBP agents within 100 miles of the U.S.-Mexico border, including but not limited to the actual or threatened use of violence, sexual assault, and/or retaliation against family members to persuade individuals apprehended by DHS and/or CBP to accept voluntary return.

In its response, CBP provided four pages of records relevant to parts 1 through 10 of AIC's Request. CBP also indicated that it was "unable to respond to parts 11 through 14" of AIC's Request because: (1) the "term 'misconduct' as used by CBP applies to all incidents that are a violation of the rules and regulations of CBP" and AIC was not sufficiently specific as to the "type of misconduct [it was] interested in"; (2) reports are "primarily retrieved via name, date of birth, SSN or other personal identifiers specific to the employee," and responsive records could not be retrieved unless AIC provided specific names of individuals involved in responsive reports; and (3) written consent is required from those individuals "involved in [responsive] reports...per third party privacy laws." Exhibit B at 2.

CBP has failed to provide to AIC a vast number of records that are relevant to AIC's Request and releasable under FOIA. AIC now appeals CBP's unfounded adverse determination.

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I. CBP DID NOT CONDUCT AN ADEQUATE SEARCH.

CBP did not conduct an adequate search for records responsive to AIC's comprehensive request for information regarding CBP's enforcement operations and activities related to voluntary returns.

An agency must carry out a reasonable search for records responsive to a FOIA request. *See Oglesby v. Army*, 920 F.2d 57, 68 (D.C. Cir. 1990). It must show that its search was reasonably calculated to uncover relevant documents. *Steinberg v. U.S. Dept. of Justice*, 23 F.3d 548, 551 (D.C. Cir. 1994); *see also Concepcion v. U.S. Customs and Border Protection*, 767 F.Supp.2d 141, 145 (D.D.C. 2011) ("An agency must search for documents in good faith, using methods that are reasonably expected to produce the requested information.").

CBP has produced only four pages of records in response to AIC's Request – a policy memorandum dated June 17, 2009 providing "Juvenile Processing Guidance," and a chart listing the number of voluntary returns, by country, conducted by CBP from January 2009 to April 2011. This limited production makes clear that CBP did not conduct a search reasonably calculated to uncover relevant documents.

The Department of Homeland Security reports that 476,405 voluntary returns occurred in 2010, and that most were comprised of Mexican nationals who were apprehended by CBP and returned to Mexico. *See Office of Immigration Statistics, U.S. Dept. of Homeland Security, 2010 Yearbook of Immigration Statistics* 94 (August 2010), available at [http://www.dhs.gov/xlibrary/assets/statistics/yearbook/2010/ois\\_yb\\_2010.pdf](http://www.dhs.gov/xlibrary/assets/statistics/yearbook/2010/ois_yb_2010.pdf). The chart produced with CBP's Response appears to indicate that CBP coordinated 662,485 voluntary returns of Mexican nationals between January 2009 and April 2011. *See Exhibit B, U.S. Border Patrol Voluntary Returns: January 2009-April 2011* at 3. Given the large number of voluntary returns that CBP manages each year and the significant resources that enforcement operations and activities related to the process must require, it is simply impossible that CBP undertook a reasonable search and determined that only two documents, comprising four pages of records, were responsive to AIC's Request.

Moreover, AIC's request for "records" related to voluntary returns encompasses all records or communications preserved in electronic or written form, including but not limited to: correspondence, directives, documents, data, videotapes, audiotapes, e-mails, faxes, files, guidance, guidelines, standards, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, rules, technical manuals, training manuals, technical specifications, training materials or studies, including records kept in written form, or electronic format on computers and/or other electronic storage devices, electronic communications and/or videotapes.

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CBP's response is conspicuously missing a variety of these documents including guidance, guidelines, directives, rules, policies, procedures, training materials, and correspondence related to the fourteen categories of records explicitly identified in the AIC Request. In addition, publicly available agency documents regarding CBP's operations and activities related to stipulated removals show that CBP has failed to provide specific types of agency documents which it has produced in the past, such as Delegation Orders, training presentation documents, deportation guidelines, and individual case records including completed Record of Deportable/Inadmissible Alien forms, Records of Action, Enforcement Responses, and legal documents. See Stanford Legal Clinic, *Deportation Without Due Process: Documents Obtained Through Freedom of Information Act Lawsuit About Federal Government's Stipulated Removal Program* (Sept. 1, 2010), available at <http://blogs.law.stanford.edu/stipulatedremoval> (providing 124 pages of documents produced by CBP related to stipulated removals).

This makes clear CBP could not have undertaken a reasonable search. See *Concepcion v. U.S. Customs and Border Protection*, 767 F.Supp.2d 141, 146 (D.D.C. 2011) ("to demonstrate the adequacy of its search, CBP must show that it searched *all* files likely to contain records responsive to the plaintiff's request" (emphasis added)).

**II. CBP ERRED FACTUALLY AND LEGALLY IN DETERMINING THAT PARTS 11-14 OF THE REQUEST WERE "UNPERFECTED."**

CBP's failure to undertake a reasonable search of its records is underscored by its discussion of, and rationale for, failing to release relevant CBP incident reports related to parts 11 through 14 of the AIC Request, which it claims are "unperfected." CBP maintains that it cannot produce incident reports to AIC because such records are "primarily retrieved" by employee personal identifiers and AIC has not provided CBP with sufficient information to search for relevant records (such as the names of CBP employees involved in potentially relevant incidents). Exhibit B at 2. CBP also contends that AIC has inadequately described the type of incident reports it seeks and must more specifically define "the type of misconduct [AIC is] interested in." *Id.* To the contrary, AIC has reasonably described the records it seeks, and thus CBP is obligated to produce them. See 5 U.S.C. § 552(a)(3)(A) (records must be made available "upon any request" which "reasonably describes such records").

Despite CBP's contention, AIC has provided information sufficient for CBP to uncover incident reports relevant to AIC's requests. The term "misconduct" (which only appears in parts 11 and 13 of the AIC Request), is not overly broad given that AIC has limited its request to "CBP enforcement operations and activities within 100 miles of the U.S.-Mexico border aimed at and/or resulting in voluntary returns of individuals to their countries of origin from January 2009 to the present." See Exhibit A at 1. Furthermore, AIC's Request makes clear that it seeks, at the very least, records, including but not limited to reports related to the "alleged mistreatment" of individuals

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in CBP custody, and “the actual or threatened use of violence, sexual assault, and/or retaliation against family members to persuade individuals apprehended by DHS and/or CBP to accept voluntary return.” See Exhibit A at 2-3.

While CBP may “primarily retrieve[]” its reports by employee personal identifiers, it has an obligation under FOIA to conduct a reasonable search of its records. A mere recitation of common search parameters does not constitute a reasonable search. See *W. Ctr. For Journalism v. Internal Revenue Serv.*, 116 F.Supp.2d 1, 8 (D.D.C. 2000) (an agency’s search need not be exhaustive but it must be reasonable); 5 U.S.C. § 552(a)(3)(D) (“the term ‘search’ means to review, manually or by automated means, agency records for the purpose of locating those records which are responsive to a request”). Further, as Department of Homeland Security statistics show that in 2009 and 2010 a total of only 113 complaints were filed against CBP, the universe of relevant records which CBP must review and potentially produce is not unduly burdensome. See U.S. Department of Homeland Security, *Data on Complaints Received* (January 28, 2011), available at [http://www.dhs.gov/xabout/structure/gc\\_1280851127243.shtm](http://www.dhs.gov/xabout/structure/gc_1280851127243.shtm) (listing the number of complaints filed against CBP each year from 2003 to 2010 on issues including “abuse of authority,” “discrimination,” “profiling,” and “treatment”).

AIC has provided sufficient information for CBP to search its incident reports, either manually or via search terms, and FOIA requires it to do so.

**III. CBP MUST PRODUCE ALL RESPONSIVE, NON-EXEMPT INFORMATION IN ITS POSSESSION THAT IS NOT ALREADY IN THE PUBLIC DOMAIN.**

CBP has an obligation to provide all relevant, non-exempt material that a reasonable search uncovers. See 5 U.S.C. § 552(a)(3). As discussed above, a reasonable search of CBP’s records incontrovertibly would reveal more information than CBP has produced. If CBP has declined to provide responsive records because it believes that such records meet the criteria for exemptions set forth in 5 U.S.C. § 552(b), AIC requests that CBP provide it with a complete list of responsive documents along with a specific indication of any material withheld and the exemption(s) that CBP claims is applicable so that AIC may respond to such contentions with specificity.

In addition, CBP’s assertion that AIC must provide written consent from any individuals “involved in” CBP reports before CBP can release records, “per third party privacy laws,” see Exhibit B at 2, is in error. FOIA requires CBP to produce the relevant portions of records with any exempt material redacted. 5 U.S.C. § 552(b) (“[a]ny reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt”); *Abdelfattah v. U.S. Dept. of Homeland Sec.*, 488 F.3d 178, 186 (3d Cir. 2007) (“An agency cannot justify withholding an entire document simply by showing that it contains some exempt

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material”) (citations omitted). This principle encompasses the type of private information that CBP has stated may be present in incident reports. *See* 5 U.S.C. § 552(b) (exemptions related to private information encompassed by segregation requirement); *see also* Exhibit B (discussing the Juvenile Processing Guidance that was produced in the CBP Response with private information redacted pursuant to exemptions set forth at 5 U.S.C. § 552(b)(6) and (b)(7)(C)).

Please provide a response to this appeal within twenty (20) business days stipulated by 5 U.S.C. § 552(a)(6)(A)(ii).

Thank you for your attention to this matter. Please contact me at (312) 604-2606, or by email at [mpiers@hsplegal.com](mailto:mpiers@hsplegal.com), if you have any questions or would like any clarification of the requests above.

Sincerely,

A handwritten signature in black ink, appearing to read "Matthew Piers", written in a cursive style.

Matthew J. Piers

/mjp

## **EXHIBIT A**





COMMUNITY EDUCATION CENTER • IMMIGRATION POLICY CENTER • INTERNATIONAL EXCHANGE CENTER • LEGAL ACTION CENTER

June 15, 2011

VIA ELECTRONIC MAIL

U.S. Customs and Border Protection  
FOIA Division  
799 9th Street, NW, Mint Annex  
Washington, DC 20229-1181  
[CBPFOIA@dhs.gov](mailto:CBPFOIA@dhs.gov)

Re: Freedom of Information Act (FOIA) Request

Dear FOIA Officer:

The American Immigration Council (AIC) submits this letter as a request for information under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, *et seq.*

Request for Information

AIC requests disclosure of any and all records<sup>1</sup> that were prepared, received, transmitted, collected and/or maintained by the U.S. Department of Homeland Security (DHS) and/or U.S. Customs and Border Protection (CBP)<sup>2</sup> that describe, refer or relate to CBP's enforcement operations and activities within 100 miles of the U.S.-Mexico border aimed at and/or resulting in voluntary returns of individuals to their countries of origin from January 2009 to the present. For purposes of this request, the term "voluntary returns" shall encompass grants of voluntary departure prior to the initiation of removal proceedings pursuant to 8 U.S.C. § 1229c(a).

The requested records include, but are not limited to, those describing, referring or relating to:

- (1) How DHS and/or CBP agents decide to stop, arrest and/or detain individuals believed to be present in the United States in violation of the immigration laws.
- (2) Guidance, guidelines, directives, rules, policies, procedures or other documents that address questioning of individuals apprehended by DHS and/or CBP agents.

<sup>1</sup> The term "records" as used herein includes all records or communications preserved in electronic or written form, including but not limited to correspondence, directives, documents, data, videotapes, audiotapes, e-mails, faxes, files, guidance, guidelines, standards, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, rules, technical manuals, training manuals, technical specifications, training materials or studies, including records kept in written form, or electronic format on computers and/or other electronic storage devices, electronic communications and/or videotapes, as well as any reproductions thereof that differ in any way from any other reproduction, such as copies containing marginal notations.

<sup>2</sup> The term "CBP" as used herein means CBP headquarters offices, including any divisions, subdivisions or sections therein; CBP field operations offices, including any divisions, subdivisions or sections therein; CBP offices at ports of entry, including any divisions, subdivisions or sections therein; and/or any other CBP organizational structures.

[www.americanimmigrationcouncil.org](http://www.americanimmigrationcouncil.org)

- (3) Criteria or other standards used by DHS and/or CBP agents to determine whether individuals they have apprehended are eligible for voluntary return;
- (4) Guidance, guidelines, directives, rules, policies, procedures or other documents that address means of determining that individuals apprehended by DHS and/or CBP agents knowingly and voluntarily consent to voluntary return and knowingly and voluntarily waive their right to a hearing before an immigration judge and/or to any immigration relief for which they may be eligible.
- (5) Guidance, guidelines, directives, rules, policies, procedures, instructions, memoranda or other documents regarding an agent's use of coercive tactics, including but not limited to the actual or threatened use of violence, sexual assault, and/or retaliation against family members to persuade individuals apprehended by DHS and/or CBP to accept voluntary return.
- (6) Any other guidance, guidelines, directives, rules, policies, procedures or other documents that address processing of individuals apprehended by CBP for voluntary return in lieu of removal.
- (7) Guidance, guidelines, directives, rules, policies, procedures, or other documents that address means of ensuring that individuals who have signed Form I-826, Notice of Rights and Request for Disposition, depart from the United States.
- (8) Agreements, correspondence, or communications within and/or among CBP, DHS, any of their agents, agencies, sub-agencies, or offices, and/or U.S. Attorneys' Offices regarding the use of voluntary return in lieu of removal.
- (9) Training materials used to educate CBP agents about the use of voluntary return in lieu of removal.
- (10) From January 2009 to April 2011, the total number of voluntary returns of individuals to their countries of origin, the nationalities of individuals who agreed to voluntary return, and, if available, the number of voluntary returns per month.
- (11) Complaints, correspondence, communications, or other documents from any individual or entity regarding alleged misconduct by DHS or CBP agents within 100 miles of the U.S.-Mexico border, including but not limited to documents relating to the alleged mistreatment of any individual while in CBP custody.
- (12) Complaints, correspondence, communications, or other documents from any individual or entity regarding alleged use of coercive tactics by DHS or CBP agents within 100 miles of the U.S.-Mexico border, including but not limited to the actual or threatened use of violence, sexual assault, and/or retaliation against family members to persuade individuals apprehended by DHS and/or CBP to accept voluntary return.
- (13) Memoranda, reports, correspondence, communications, or other documents regarding investigations undertaken by DHS, CBP, or another government agency regarding alleged misconduct by DHS or CBP agents within 100 miles of the

U.S.-Mexico border, including but not limited to documents relating to the alleged mistreatment of any individual while in CBP custody.

- (14) Memoranda, reports, correspondence, communications, or other documents regarding investigations undertaken by DHS, CBP, or another government agency regarding alleged use of coercive tactics by DHS or CBP agents within 100 miles of the U.S.-Mexico border, including but not limited to the actual or threatened use of violence, sexual assault, and/or retaliation against family members to persuade individuals apprehended by DHS and/or CBP to accept voluntary return.

We request that records existing in electronic format be provided in electronic format or on a compact disc. If any of the requested records or information is not in a succinct format, we request the opportunity to view the documents in your offices.

If any of the information requested is considered exempt under applicable law, please describe in detail the nature of the information withheld, the specific exemption or privilege upon which the information is withheld and whether the portions of withheld documents containing non-exempt or non-privileged information have been provided.

Request for fee waiver

AIC requests that all fees associated with this FOIA request be waived. Under 5 U.S.C. § 552(a)(4)(A)(iii), fees may be waived where the requestor has demonstrated that (i) disclosure of the information is in the public interest in that it is likely to contribute significantly to public understanding of the operations or activities of the government; and (ii) disclosure of the information is not primarily in the commercial interest of the requestor.

AIC, a non-profit organization, educates citizens about the enduring contributions of America's immigrants, supports sensible and humane immigration policies that reflect American values, promotes the just and fair administration of our immigration laws, and protects the constitutional and legal rights of noncitizens. Through research, analysis and publications, AIC's Immigration Policy Center (IPC) provides policymakers, the media, and the general public with accurate information about the role of immigrants and immigration policy in U.S. society. The Legal Action Center (LAC) provides technical assistance to immigration lawyers across the country and engages in impact litigation, including appearing as *amicus curiae* before administrative tribunals and federal courts in significant immigration cases on targeted legal issues.

*a. Disclosure of the Information is in the Public Interest*

DHS considers four factors set forth in 6 C.F.R. § 5.11(k)(2) when determining whether disclosure of the information is in the public interest:

- (1) "Whether the subject of the request concerns the 'operations or activities of the government,'"
- (2) "Whether the disclosure 'is likely to contribute' to an understanding of government operations or activities,"

- (3) “Whether disclosure of the requested information will contribute to ‘public understanding’” as opposed to the individual understanding of the requestor or a narrow segment of interested persons; and
- (4) “Whether the disclosure is likely to contribute ‘significantly’ to public understanding of government operations or activities.”

For a request to be considered in the public interest, all four criteria must be satisfied. *Judicial Watch v. Dep’t of Justice*, 365 F.3d 1108, 1126 (D.C. Cir. 2004).

The requested documents clearly concern identifiable “operations or activities” of the government. AIC seeks records related to the enforcement operations and activities of CBP, a government agency, near and at the U.S.-Mexico border.

The request satisfies the second criterion because disclosure is likely to contribute to a better understanding of government operations or activities related to immigration enforcement and border security, including DHS and CBP’s use of voluntary return in lieu of removal proceedings to effect the departure of unlawfully present noncitizens from the United States. AIC is not aware of any documents providing information responsive to this FOIA request. Because this information is not already in the public domain, its release will significantly increase understanding of DHS and CBP’s enforcement practices.

Disclosure of the requested information also will contribute to “public understanding,” as opposed to understanding of a narrow segment of interested persons. Release of this information to AIC will significantly advance the general public’s understanding of CBP’s enforcement operations and activities. It is likely that a proper search in response to this request will reveal a large volume of responsive information. AIC has the capacity, legal expertise, and intention to review, analyze, and synthesize this information and make it accessible to a broad public audience. AIC plans to draft and disseminate a summary report of this information on our website, which contains immigration-related information and news and is accessible by any member of the public. AIC’s website receives more than 58,000 monthly visitors, and information available on the website is shared and re-posted on other websites with large audiences, including Alternet, a website with 2.3 million monthly visitors. AIC also will circulate a summary of the information in the LAC newsletter, which is directly distributed to 12,000 recipients and available to the public on the AIC website. Finally, AIC will share this information with our extensive contacts in the national print and news media.

The request satisfies the last criterion because disclosure of the requested information will contribute significantly to public understanding about CBP’s enforcement practices in general and the agency’s use of voluntary return in particular. This information will be particularly helpful to immigration attorneys who represent noncitizens who may be subject to stops, arrests, detention and/or questioning by CBP agents, the noncitizens themselves, nonprofit organizations interested in civil and/or human rights, and other members of the public who are concerned with immigration agency proceedings and policies.

b. *Disclosure of the Information Is Not Primarily in the Commercial Interest of the Requestor.*

DHS considers two factors set forth in 6 C.F.R. § 5.11(k)(2) when determining whether disclosure of the information is in the public interest:

- (1) "Whether the requester has a commercial interest that would be furthered by the requested disclosure," and
- (2) "Whether any identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure," thereby rendering the disclosure "primarily in the commercial interest of the requester."

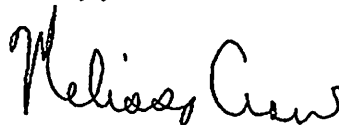
AIC is a 501(c)(3), tax-exempt, not-for-profit educational and charitable organization. AIC seeks the requested information for the purpose of disseminating it to the general public and not for the purpose of commercial gain. Like all other reports and information available on the AIC website, information about CBP's enforcement practices received in response to this FOIA request will be available to immigration attorneys, noncitizens and other interested members of the public free of charge.

Given that FOIA's fee waiver requirements are to "be liberally construed in favor of waivers for noncommercial requesters," a waiver of all fees is justified and warranted in this case. *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003). If you deny the fee waiver request, we respectfully ask for a limitation of processing fees pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II).

Please inform us if the charges for this FOIA production will exceed \$25.00.

Thank you in advance for your timely response to this request. If you have any questions, please feel free to contact me at (202) 507-7523 or by e-mail at [mcrow@immcouncil.org](mailto:mcrow@immcouncil.org).

Sincerely yours,



Melissa Crow  
Director, Legal Action Center  
American Immigration Council  
1331 G Street, NW, Suite 200  
Washington, DC 20005-3141  
Tel: (202) 507-7523  
Fax: (202) 742-5619  
E-mail: [mcrow@immcouncil.org](mailto:mcrow@immcouncil.org)

## **EXHIBIT B**

1300 Pennsylvania Avenue NW  
Washington, DC 20229



**U.S. Customs and  
Border Protection**  
DIS-2:OT:CTE:FD PH  
2011F13090

August 3, 2011

Melissa Crow  
Director, Legal Action Center  
American Immigration Council  
1331 G Street NW, Suite 200  
Washington, DC 20005

Dear Ms. Crow:

This is a partial response to your Freedom of Information Act (FOIA) request to U.S. Customs and Border Protection (CBP). You requested the following information:

1. How DHS and/or CBP agents decide to stop, arrest and/or detain individuals believed to be present in the United States in violation of the immigration laws.
2. Guidance, guidelines, directives, rules, policies, procedures or other documents that address questioning of individuals apprehended by DHS and/or CBP agents.
3. Criteria or other standards used by DHS and/or CBP agents to determine whether individuals they have apprehended are eligible for voluntary return.
4. Guidance, guidelines, directives, rules, policies, procedures or other documents that address means of determining that individuals apprehended by DHS and/or CBP agents knowingly and voluntarily consent to voluntary return and knowingly and voluntarily waive their right to a hearing before an immigration judge and/or to any immigration relief for which they may be eligible.
5. Guidance, guidelines, directives, rules, policies, procedures, instructions, memoranda or other documents regarding an agent's use or coercive tactics, including but not limited to the actual or threatened use of violence, sexual assault, and/or retaliation against family members to persuade individuals apprehended by DHS and/or CBP to accept voluntary return.
6. Any other guidance, guidelines, directives, rules, policies, procedures or other documents that address processing of individuals apprehended by CBP for voluntary return in lieu of removal.
7. Guidance, guidelines, directives, rules, policies, procedures, or other documents that address means of ensuring that individuals who have signed Form I-826, Notice of Rights and Request for Disposition, depart from the United States.
8. Agreements, correspondence, or communications within and/or among CBP, DHS, any of their agents, agencies, sub-agencies, or offices, and/or U.S. Attorneys' Offices regarding the use of voluntary return in lieu of removal.
9. Training materials used to educate CBP agents about the use of voluntary return in lieu of removal.

10. From January 2009 to April 2011, the total number of voluntary returns of individuals to their countries of origin, the nationalities of individuals who agreed to voluntary return, and, if available, the number of voluntary returns per month.
11. Complaints, correspondence, communications, or other documents from any individual or entity regarding alleged misconduct by DHS or CBP agents within 100 miles of the U.S.-Mexico border, including but not limited to documents relating to the alleged mistreatment of any individual while in CBP custody.
12. Complaints, correspondence, communications, or other documents from any individual or entity regarding alleged use of coercive tactics by DHS or CBP agents within 100 miles of the U.S.-Mexico border, including but not limited to the actual or threatened use of violence, sexual assault, and/or retaliation against family members to persuade individuals apprehended by DHS and/or CBP to accept voluntary return.
13. Memoranda, reports, correspondence, communications, or other documents regarding investigations undertaken by DHS, CBP, or another government agency regarding alleged misconduct by DHS or CBP agents within 100 miles of the U.S.-Mexico border, including but not limited to documents relating to the alleged mistreatment of any individual while in CBP custody.
14. Memoranda, reports, correspondence, communications, or other documents regarding investigations undertaken by DHS, CBP, or another government agency regarding alleged use of coercive tactics by DHS or CBP agents within 100 miles of the U.S.-Mexico border, including but not limited to the actual or threatened use of violence, sexual assault, and/or retaliation against family members to persuade individuals apprehended by DHS and/or CBP to accept voluntary return.

Please note that we will be unable to respond to parts 11 through 14 of your request as currently constructed. The term "misconduct" as used by CBP applies to all incidents that are a violation of the rules and regulations of CBP; you will need to be more specific as to the type of misconduct you are interested in. Further, please note that reports are primarily retrieved via name, date of birth, SSN or other personal identifiers specific to the employee. We are unable to pull statistical information such as "allegations of coercive tactics by agents". Please also note that these reports are not sorted by title; we can not request "all Border Patrol Agent reports".

At this time, parts 11 through 14 of your request are considered unperfected. If you do have the names of individuals involved in these reports, you will need to provide written consent from those individuals for us to release records, per third party privacy laws.

CBP is including four pages of records responsive to your request in this response. CBP has determined that three pages of records are fully releasable and responsive to part 10 of your request. We have also included one additional page with limited redactions, pursuant to Title 5 U.S.C. § 552 (b)(6) and (b)(7)(C).

Exemption (b)(6) exempts from disclosure personnel or medical files and similar files the release of which would cause a clearly unwarranted invasion of personal privacy. This requires a balancing of the public's right to disclosure against the individual's right privacy. [*The types of documents and/or*



*information that we have withheld may consist of birth certificates, naturalization certificates, driver license, social security numbers, home addresses, dates of birth, or various other documents and/or information belonging to a third party that are considered personal.] The privacy interests of the individuals in the records you have requested outweigh any minimal public interest in disclosure of the information. Any private interest you may have in that information does not factor into the aforementioned balancing test.*

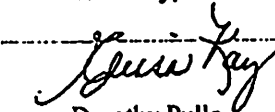
Exemption (b)(7)(C) protects records or information compiled for law enforcement purposes that could reasonably be expected to constitute an unwarranted invasion of personal privacy. This exemption takes particular note of the strong interests of individuals, whether they are suspects, witnesses, or investigators, in not being unwarrantably associated with alleged criminal activity. That interest extends to persons who are not only the subjects of the investigation, but those who may have their privacy invaded by having their identities and information about them revealed in connection with an investigation. Based upon the traditional recognition of strong privacy interest in law enforcement records, categorical withholding of information that identifies third parties in law enforcement records is ordinarily appropriate.

You have a right to appeal our withholding determination. Should you wish to do so, you must send your appeal and a copy of this letter, within 60 days of the date of this letter, to: FOIA Appeals, Policy and Litigation Branch, U.S. Customs and Border Protection, 799 Ninth Street, NW, 5<sup>th</sup> Floor, Washington, DC 20229-1179, following the procedures outlined in the DHS regulations at Title 6 C.F.R. § 5.9. Your envelope and letter should be marked "FOIA Appeal." Copies of the FOIA and DHS regulations are available at [www.dhs.gov/foia](http://www.dhs.gov/foia).

The Office of Government Information Services (OGIS) also mediates disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. If you wish to contact OGIS, you may email them at [ogis@nara.gov](mailto:ogis@nara.gov) or call (877) 684-6448.

This office may be reached at (202) 325-0150. Please notate file number 2011F13090 on any future correspondence to CBP related to this request.

Sincerely,



Dorothy Pullo  
Director, FOIA Division  
Office of International Trade

Enclosure(s)

1300 Pennsylvania Avenue NW  
Washington, DC 20229

OBP 10.9-C



**U.S. Customs and  
Border Protection**

**JUN 17 2009**

**MEMORANDUM FOR:** All Chief Patrol Agents  
All Division Chiefs

**FROM:**  David V. Aguilar  
Chief  
U.S. Border Patrol

(b)(6),(b)(7)(C)

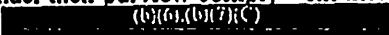
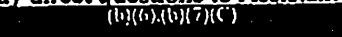
**SUBJECT:** Juvenile Processing Guidance

The U.S. Border Patrol takes great strides to ensure that all subjects are adequately cared for while in our custody and that all juveniles, including unaccompanied alien children, are treated with dignity, respect, and special concern for their particular vulnerabilities. The Border Patrol currently processes, detains, and cares for juveniles, including unaccompanied alien children, based upon guidelines and requirements set forth in the 1997 *Flores v. Reno* Settlement Agreement, the Homeland Security Act of 2002, the Border Patrol Hold Room and Short Term Detention Policy, the Trafficking Victim's Protection Reauthorization Act of 2008 Interim Guidance, and Customs and Border Protection Form 93 "Unaccompanied Alien Child Screening Addendum."

Agents must familiarize themselves with these policies and procedures. Adherence to these guidelines will safeguard the welfare of juveniles and ensure processing efficiency.

Timely and accurate recording of juvenile apprehension, processing, and detention are critical to mission success. Supervisors shall review and approve processing forms and juvenile disposition prior to transfer or removal. As indicated in the Border Patrol Handbook, Chapter 22, Preparation and Distribution of Forms and Reports, "Border Patrol Agents are responsible for the accuracy of any forms or reports they submit. Supervisors are accountable for any reports or forms they forward, regardless of whether their signature or initials are required."

Chief Patrol Agents will ensure that agents under their purview comply with these instructions.

Staff may direct questions to Assistant Chief  or Operations Officer 

(b)(6),(b)(7)(C)

(b)(6),(b)(7)(C)

**U.S. Border Patrol Voluntary Returns****January 2009 - April 2011***Data Includes Deportable Aliens Only*

Data Source: EID (unofficial) as of 7/14/11

	FY2009								
CITIZENSHIP	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP
CANADA	7	20	10	16	22	54	84	65	38
CHINA, PEOPLES REPUBLIC OF					1				
DOMINICAN REPUBLIC	10		3	2	1	3	2	3	1
MEXICO	31,458	34,072	50,025	42,744	34,743	30,911	28,381	27,562	22,312
<b>Total</b>	<b>31,475</b>	<b>34,092</b>	<b>50,038</b>	<b>42,760</b>	<b>34,764</b>	<b>30,914</b>	<b>28,383</b>	<b>27,565</b>	<b>22,351</b>

	FY2010											
CITIZENSHIP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP
CANADA	8	13	4	13	28	24	15	32	81	170	110	20
CHINA, PEOPLES REPUBLIC OF				1	2							
DOMINICAN REPUBLIC	1	9				11	2	3		2	13	16
MEXICO	26,205	19,315	13,682	20,730	27,838	41,314	35,826	28,588	18,579	14,126	11,621	9,756
<b>GATC TOTAL</b>	<b>26,213</b>	<b>19,324</b>	<b>13,686</b>	<b>20,741</b>	<b>27,866</b>	<b>41,325</b>	<b>35,841</b>	<b>28,623</b>	<b>18,660</b>	<b>14,128</b>	<b>11,634</b>	<b>9,772</b>

	FY2011							
CITIZENSHIP	OCT	NOV	DEC	JAN	FEB	MAR	APR	JAN 09 - APR 11
CANADA	12	13	2	7	3	16	6	
CHINA, PEOPLES REPUBLIC OF		2				1		
DOMINICAN REPUBLIC	13	12	8	12	3	16	8	
MEXICO	10,892	8,720	7,898	11,540	13,469	22,654	17,528	
<b>GRAND TOTAL</b>	<b>10,914</b>	<b>8,735</b>	<b>7,908</b>	<b>11,557</b>	<b>13,472</b>	<b>22,670</b>	<b>17,534</b>	